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Attorneys for the United States of America

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

United States of America,

 Plaintiff,

 v.

 Richard Washinsky, M.D.,

 Defendant.

Case No. 2:22-cv-01803-APG-VCF

**United States' Motion to Extend Time to
 Serve
 (Second Request)**

Under Federal Rule of Civil Procedure 4(m), the United States respectfully requests a 60-day extension of time to serve process on defendant Richard Washinsky, M.D. The United States has attempted 13 times, across six addresses, to serve Dr. Washinsky personally, without success. The United States' multiple attempts to locate and serve Dr. Washinsky equate to good cause for granting an extension. Accordingly, the Court should grant the United States' motion.

I. Background

On October 27, 2022, the United States filed a complaint against Dr. Washinsky alleging violations of the Controlled Substances Act, 21 U.S.C. § 801 et seq., and its implementing regulations, 21 C.F.R. § 1301 et seq. (Compl. (ECF No. 1).) Within a week of filing the complaint, on November 4, 2022, the United States attempted to serve Dr. Washinsky. (*See* Affidavit of Due Diligence (ECF No. 5-1).) After attempting service at five locations within ten weeks, the United

1 States' process server failed to locate and serve Dr. Washinsky. (*Id.* at 2.) In addition to the
2 numerous attempts described above, the United States' process server searched the county
3 assessor, DMV, voter registration, and telephone directory for information relating to Dr.
4 Washinsky. (*Id.*) Despite these efforts, the United States was unable to locate and serve Dr.
5 Washinsky in Nevada. (*Id.*)

6 Based on information that Dr. Washinsky might be residing in Fort Meyers, Florida, the
7 United States requested its first service extension, which the Court granted. (Order (ECF No. 6).)
8 The United States retained a process server in Fort Meyers, who attempted service two times at
9 Dr. Washinsky's brother's house in Fort Meyers but was unable to serve Dr. Washinsky at that
10 address. (*See* Verified Return of Non-Service, attached as Exhibit 1.) Dr. Washinsky's brother
11 informed the process server that Dr. Washinsky is now living in Fort Lauderdale, but the process
12 server was unable to locate a potential address using a skip trace. (*Id.*) Dr. Washinsky's brother
13 also provided a telephone number for Dr. Washinsky. (*Id.*) The United States Attorney's Office
14 conducted additional open-source research for a potential address for Dr. Washinsky in Fort
15 Lauderdale and was unable to locate one. (Decl. of Lindsay Ager, attached as Exhibit 2.) But the
16 United States is continuing to monitor public databases for a new address in Fort Lauderdale or
17 elsewhere. (*Id.*)

18 **II. Analysis**

19 **A. Extension of Time to Serve**

20 Under Federal Rule of Civil Procedure 4(m), a defendant must be served within 90 days
21 after the complaint is filed. Fed. R. Civ. P. 4(m). If the defendant is not served within the 90-day
22 period, the plaintiff can ask the court to extend the time for service. *Id.* The court must extend the
23 time for service if the plaintiff shows good cause for the failure to serve the defendant within 90
24 days. *Lemoge v. United States*, 587 F.3d 1188, 1198 (9th Cir. 2009) (citing prior version of Rule 4(m)
25 with a 120-day deadline); Fed. R. Civ. P. 4(m). Courts determine on a case-by-case basis whether
26 the party attempting service has shown good cause. *In re Sheehan*, 253 F.3d 507, 512 (9th Cir.
27 2001). Generally, good cause is demonstrated "where a plaintiff has shown diligent efforts to effect
28 service." *Signature Surgery Ctr. LLC v. Cel Servs. Grp., Inc.*, No. 2:21-CV-00215-JCM-EJY, 2022 WL

1432444, at *1 (D. Nev. Apr. 5, 2022). It is within the court's discretion whether to extend the time for service. *Lemoge*, 587 F.3d at 1198.

B. Given the United States' diligence, there is good cause to extend the service deadline.

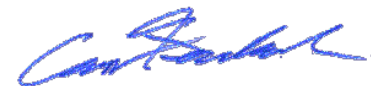
The United States has been diligent in its attempts to serve Dr. Washinsky. Since filing the complaint, the United States has tried 13 times, across six different addresses, to locate and serve Dr. Washinsky in Las Vegas, Nevada, and Fort Meyers, Florida. The United States seeks additional time to attempt to pinpoint an address in Fort Lauderdale, Florida, where Dr. Washinsky's brother stated Dr. Washinsky is living. Although a skip trace and other open-source research did not pinpoint a Fort Lauderdale address, it is possible the address is too new to be showing in public records. The United States has set up "alerts" in multiple databases and would like to continue to monitor those databases for a new address. The United States also monitors the Nevada State Board of Medical Examiners' website for updates to Dr. Washinsky's public address, as he is a medical doctor with an active license in the State of Nevada. Additionally, the United States' process server will attempt to contact Dr. Washinsky at the telephone number provided by Dr. Washinsky's brother to determine if Dr. Washinsky will agree to meet the process server to accept service of process.

III. Conclusion

The United States' multiple attempts to locate and serve Dr. Washinsky demonstrate good cause for an extension of the service deadline. Given its ongoing efforts to personally serve Dr. Washinsky, the United States respectfully requests that the Court grant its 60-day motion to extend the time limit for service from April 25, 2023, until June 26, 2023.

Dated: April 25, 2023

IT IS SO ORDERED.



Cam Ferenbach
United States Magistrate Judge

JASON M. FRIERSON
United States Attorney

/s/ Lindsay Ager
LINDSAY AGER
Assistant United States Attorney

DATED 4-27-2023

Index of Exhibits

- **Exhibit 1** Verified Return of Non-Service
- **Exhibit 2** Declaration of Lindsay Ager

EXHIBIT 1

Verified Return of Non-Service

VERIFIED RETURN OF NON-SERVICE

Job # FM32603

Client Info:

Lindsay Ager, AUSA United States Attorney's Office
Lindsay Ager, AUSA United States Attorney's Office
501 Las Vegas Boulevard South, Suite 1100
Las Vegas, NV 89101

Case Info:

PLAINTIFF:

United States of America

-versus-

DEFENDANT:

Richard Washinsky, M.D.

DISTRICT COURT

Court Case # **2:22-cv-01803-APG-VCF**

Service Info:

Received by Mark Zammett: on March, 21st 2023 at 03:44 PM

Service: I Non-Served **Dr. Richard Washinsky**
SUMMONS IN A CIVIL ACTION; COMPLAINT

At Residence 6501 DABNEY ST. FORT MYERS, FL 33966

On **4/10/2023 at 12:26 AM**

Manner of Service:

[X] **Non-service:** After due search, careful inquiry and diligent attempts at the address(es) listed below, I have been unable to effect the process upon the person/entity being served because of the following reason(s):

[X] Other: Skip Trace/Research done, no viable addresses found in Florida, only older Nevada addresses found along with the Dabney St. address, which is the subject's brother's address.

Service was Attempted on:

(1) 3/22/2023 at 11:30 AM, by Mark Zammett Loc: 6501 Dabney St., Fort Myers, FL 33966

Notes: Server attempted - Not answering, Toyota Tundra plate: PINCHYS Left a card.

(2) 3/23/2023 at 08:21 PM, by Mark Zammett Loc: 6501 Dabney St., Fort Myers, FL 33966

Notes: Server attempted: Alan Washinky says his brother now lives in Fort Lauderdale. His phone number is 702-401-6925.

I **Mark Zammett** acknowledge that I am 18 years or older, authorized to serve process, in good standing in the jurisdiction wherein the process was served, and I have no interest in the above action. Under penalties of perjury, I declare that I have read the foregoing document and that the facts stated in it are true.



Mark Zammett

Lic # **157433**

Accurate Serve Fort Myers

4600 Summerlin Road, Suite C2-411
Fort Myers, FL 33919
Phone: (239) 822-7299

Our Job # **FM32603** Client Ref # **RE: Fr Process**
Srvr Re: [EXTERNAL] Re: Process Server



UNITED STATES DISTRICT COURT

for the

District of Nevada

United States of America

Plaintiff(s)

v.

Richard Washinsky, M.D.

Defendant(s)

Civil Action No. 2:22-cv-01803-APG-VCF

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Richard Washinsky, M.D.
 9010 W. Cheyenne Ave.
 Las Vegas, Nevada 89129

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Lindsay Ager, AUSA
 United States Attorney's Office
 District of Nevada
 501 Las Vegas Boulevard South, Suite 1100
 Las Vegas, Nevada 89101

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.



CLERK OF COURT

Signature of Clerk or Deputy Clerk

Date: 10/28/2022

EXHIBIT 2

Declaration of Lindsay Ager

JASON M. FRIERSON
United States Attorney
District of Nevada
Nevada Bar No. 7709
LINDSAY AGER
Assistant United States Attorney
Nevada Bar No. 11985
501 Las Vegas Blvd. So., Suite 1100
Las Vegas, Nevada 89101
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DISTRICT OF NEVADA

United States of America,

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Case No. 2:22-cv-01803-APG-VCF

**Declaration of Lindsay Ager in Support of
Motion to Extend Time to Serve**

1. I, Lindsay Ager, am the Assistant United States Attorney in the United States Attorney's Office for the District of Nevada assigned to this case. I make this declaration under 28 U.S.C. § 1746 based on my recollection and the knowledge and information available to me as an Assistant United States Attorney.

2. I made this declaration in support of the United States' Motion to Extend Time to Serve.

3. In connection with this case, the United States Attorney's Office has conducted searches in Thompson Reuter's CLEAR investigation software and the LexisNexis Public Records database to attempt to locate addresses to personally serve Dr. Washinsky, including addresses in Las Vegas, Nevada, Fort Meyers, Florida, and Fort Lauderdale, Florida. The United States has set up "alerts" in those databases to notify the United States of new information. The

1 United States also monitors the Nevada State Board of Medical Examiners' website for updates
2 to Dr. Washinsky's public address, as he is a medical doctor with an active license in the State of
3 Nevada. This research is in addition to the "skip traces" the Nevada- and Florida-based process
4 servers performed.

5 4. Given that neither the process server's "skip trace" nor the United States' research
6 has located a potential address for Dr. Washinsky in Fort Lauderdale, the United States seeks to
7 continue to monitor these sources, in addition to the other steps described in the United States'
8 motion, in case Dr. Washinsky is a new resident of Fort Lauderdale and the sources the United
9 States is monitoring have not yet been updated to reflect the new address.

10 5. I declare under the penalty of perjury that the foregoing is true and correct.

11 Executed on April 25, 2023.

12 */s/ Lindsay Ager*

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14 Lindsay Ager
15 Assistant United States Attorney
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